

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

EARL MITCHELL

PLAINTIFF

VS.

CIVIL ACTION NO. 3:04CV635BS

ARMED M. ZEIN

DEFENDANT

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This matter came before the court on the Suggestion of Death filed by the Defendant, in which he notified the court that the Plaintiff, a former inmate in the custody of the Mississippi Department of Corrections, has died, and the Defendant has asked the court to dismiss this action for that reason. The Suggestion indicated that the Plaintiff has no close family relations who might move to be substituted in his place, as provided by Fed. R. Civ. P. 25(a)(1). Having been so notified, the court held this matter open for ninety days following the filing of the Suggestion of Death, in order to permit substitution of another party. No other party has sought to pursue the Plaintiff's rights in this matter; therefore, it is the opinion of the undersigned that this matter should be dismissed with prejudice.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendations contained within this report and recommendation within ten (10) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. 28 U.S.C. § 636; *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

This the 16th day of January, 2007.

S/James C. Sumner
UNITED STATES MAGISTRATE JUDGE